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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-ninth session

SUMMARY RECORD OF THE 1162nd MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 8 August 1996, at 10 a.m.

Chairman: Mr. BANTON

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GE.96-19303 (E)

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTI UNDER ARTICLE 9 OF THE CONVENTION (agenda item 5) (continued)

Tenth to fourteenth periodic reports of India (CERD/C/299/Add.3) (continued)

1. At the invitation of the Chairman, Mr. Rao, Mr. Singh and Mr. Venu (India) resumed their places at the Committee table.

2. Mr. GARVALOV said that he understood that States parties often found i difficult to comply with article 9 (1) of the Convention and the reporting requirements therein, but accession to the Convention meant that every artic should be respected as far as possible and India should make every effort to report to the Committee on time.

3. Chapter I of the report provided useful information on how India interpreted "race" and its interrelationship with Indian society. It was commendable that "positive discrimination" measures had been incorporated in the Constitution of India, as mentioned in paragraph 6, inter alia, to promo the access of Scheduled Castes and Scheduled Tribes to the mainstream of national life. However, the fundamental problems of the caste system remained. Indian society comprised ethnically different groups, and the argument that the main distinctions were based on language, caste, religion or regional characteristics rather than race was unacceptable.

4. Was it true that the Government was taking a new stance with regard to problems of different population groups by establishing a National Commissio for Scheduled Castes and Scheduled Tribes, a National Commission on Minoriti and a National Human Rights Commission?

5. It was encouraging to note that no organization promoting or inciting racial discrimination could exist legally in India and that the Constitution and laws made it clear that the State would take action to prevent activiti and propaganda that incited racial discrimination. However, were there actu cases in which organizations had fallen foul of the law and been banned?

6. Paragraph 28 mentioned the rights of all citizens to take part in publ affairs and Government, and eligibility for inclusion on the electoral roll However, it did not specify whether those rights extended to the untouchable Despite the educational measures aimed at integrating the untouchables referred to in the delegation's oral presentation, it was still difficult to rectify a situation that was so deeply entrenched in society. Their integration should be an open process and they should be consulted as to whether they felt their rights under article 325 of the Constitution and their other human rights were being protected.

7. Further information was also needed on various specific situations, su as that in Kodiankulam, and on whether autonomy had been granted there. Wh steps had been taken in response to the claim of indigenous peoples in Biha and Orissa that they had been relegated to unskilled mining jobs and displa by development projects and what did the Government of India intend to do regarding the development of Jharkand State?

8. Mr. DIACONU said that he welcomed the statement that there was felt to be no division among races in India. However, the heterogeneity of the Indian population could not be discounted and further information on the National Commission for Scheduled Castes and Scheduled Tribes, the National Commission on Minorities and a National Human Rights Commission would be welcome.

9. Paragraph 15 dealt with the prohibition of discrimination by the State and the right of citizens to have access to the public places listed. However, it did not explain whether discrimination on the part of individuals or associations in areas such as employment was similarly prohibited.

10. The reference in paragraph 24 to the prohibition of organizations which promoted or incited racial discrimination did not give details of the specific provisions in that area or indicate whether such organizations were directly or indirectly prohibited.

11. The provisions described in paragraph 28 governing political rights and the efforts to ensure that all citizens enjoyed them were to be applauded, particularly in a country the size of India. However, he would like to know what the status of the Convention was in domestic law in India, particularly in the event of conflict between the two. Could the Convention be invoked directly before the courts?

12. The Committee often stressed the importance of education, particularly in a child's mother tongue, in the elimination of racial discrimination. Was there such education in India and, if so, to what levels? Could the delegation provide a breakdown of school attendance rates according to ethnic group?

13. He agreed with Mr. Garvalov that consideration should be given to whether certain religious differences amounted to ethnic differences. Was religion an essential element of different ethnic identities? Did the delegation see linguistic differences as a sign of cultural and ethnic differences? Finally, an explanation was needed as to the extent to which preferences or exclusion in Indian society were based on people's backgrounds.

14. Mr. van BOVEN said that chapter I of the report on general policies and overall legal framework gave the strong impression that India believed that people of different castes and tribes did not fall within the scope of the Convention, particularly where it said that "categorical distinctions of 'race' or 'national or ethnic origin' have ceased to exist". Similarly, the report stated that "the policies of the Indian Government relating to Scheduled Castes and Scheduled Tribes do not come under the purview of article 1 of the Convention". The Committee's conceptions of "race" and "descent" clearly differed from those of the Government of India.

15. The ninth periodic report of India (CERD/C/149/Add.11) had provided information on the development and protection of Scheduled Castes and had therefore clearly recognized that the Convention was applicable to the situation in India. In the tenth to fourteenth periodic reports however, it was stated that information on matters dealt with in article 1 of the Convention would be provided only as "a matter of courtesy". It should be

recalled that, when the Convention had been drafted, the delegation of India at that time had made a valuable contribution to the same article 1, particularly subsection 4 which advocated affirmative action, and article 2 (2), which was along the same lines. There seemed to be some discrepancy between that historical contribution and the attitude that was being taken in the report.

16. More information was needed on India's implementation of article 4 of the Convention. As to the application of article 6 of the Convention, it seemed that additional measures were needed if full compliance was to be ensured, in so far as it was left merely to the courts to decide whether a person should be entitled to reparation or compensation for the violation of his or her human rights.

17. He asked the delegation to explain India's position on article 14 of the Convention regarding communications from individuals to the Committee. Clarification was also needed of the aims and purposes of the national institutions mentioned in paragraph 12 and as to whether they played a role in the dissemination of the text of the Convention or the report to the Committee and the Committee's ensuing concluding observations.

18. He invited comments on reports of raids on and violence targeted at untouchables and their villages. The general picture that emerged was that the perpetrators of such attacks were going unpunished and that neither the victims nor their families were being compensated. The Indian authorities had a duty, under more than one provision of the Convention, to prevent such incidents and, where they did occur, to punish the guilty parties.

19. The CHAIRMAN, speaking as a member of the Committee, said that the definition of "race" had evolved over the centuries. The meaning used in the Convention clearly differed from India's concept of the term.

20. In its periodic reports, the Government should provide social indicators which showed progress towards meeting its goals. In that way, the Committee could monitor the situation in India, as it did in other countries.

21. With regard to articles 4 and 6 of the Convention, States were obliged to ensure effective remedies against acts of racial discrimination or racist propaganda. The report did not go into great detail in that regard, an omission that should be rectified.

22. Mr. CHIGOVERA fully endorsed the main point made by Mr. Van Boven. The second and third sentences of paragraph 7 of the report appeared to be contradictory, and the fact that castes and tribes were based on descent brought them strictly within the Convention, under the terms of article 1.

23. A report to the Committee by the South Asia Human Rights Documentation Centre dated 27 July 1996, stated that untouchability was a system in which people were segregated on the basis of colour and that the tradition of untouchability sanctioned widespread discrimination and human rights abuses. There was therefore no doubt as to whether the caste of untouchables fell within the purview of the Convention.

24. As far as article 4 of the Convention was concerned, the report might usefully have included at least the statistics of cases reported or dealt with by the Indian authorities in their campaign against injustices caused by untouchability. Information on the effectiveness of legislation on the abolition of untouchability and the protection of civil rights, which had created various new offences, would greatly assist the Committee in assessing the success of that campaign.

25. With regard to article 5 of the Convention, and with particular reference to paragraph 30 of the report, he asked for clarification on the other economic, social and cultural rights provided for under the Convention which fell within the ambit of the Directive Principles of State Policy of the Indian Constitution. Also, did that directive have the force of law and was it enforceable?

26. Mr. ABOUL-NASR said that, while the report gave a good description of the situation of the problems and achievements in India, a certain amount of information was lacking.

27. The statement in paragraph 7 of the report that certain castes and tribes did not come within the purview of the Convention was unacceptable; it was obvious to the members of the Committee without referring to dictionaries, history or the interpretation of the Convention in article 22 that the castes and tribes in question were the subject of racial discrimination and came within the purview of the Convention. In that connection he wondered who defined caste and race in India and on what basis.

28. It had been stated at the Committee's previous meeting that a State party's declaration under article 14 of the Convention was proof of its respect for the Convention. If that were true, it would mean that the overwhelming majority of member States did not respect the Convention, which was clearly not the case. The Committee should not put pressure on States parties to make the declaration. It was the only optional clause in the Convention and would remain so, irrespective of the views of the Committee. The concluding observations should not, therefore, refer to the previous day's statement as the opinion of the Committee.

29. Mr. SHAHI said that there was clearly a gap between legislation and practical implementation in India. The Government, through the special legislation it had enacted, had nevertheless sought to improve the status of the Scheduled Castes and Scheduled Tribes, and he expressed the hope that India's next periodic report would show that it had addressed the criticisms expressed in the report of the South Asia Human Rights Documentation Centre in respect of the shortcomings in the implementation of various articles of the Convention.

30. It was disturbing that, while India had taken steps towards redressing human rights issues and racial discrimination in particular and had set up such institutions as the National Commission for Scheduled Castes and Scheduled Tribes, the National Commission on Minorities and the National Human Rights Commission, those bodies had no competence to investigate human rights abuses by members of the armed forces. As a result, the populations of north-east India, the Dalits and the populations of Kashmir could be arrested,

tortured and executed by the armed forces without accountability, as had occurred for many years. The National Human Rights Commission, to be effective and credible, should therefore be given competence to address those abuses.

31. India's ninth periodic report had contained demographic information on the Scheduled Castes and Scheduled Tribes which had not appeared in the fourteenth periodic report. Also, in considering India's ninth report in 1987, the Committee had requested information on the jobs set aside in the public services for the Scheduled Castes and Scheduled Tribes and other backward classes, as provided in the Indian Constitution. Such information would be useful to the Committee in evaluating the extent of India's compliance with the Convention.

32. The question of the immunity of the security forces in carrying out arrests and exercising summary powers of life and death, which added to the terrorization and sense of deep insecurity of the Scheduled Castes and Scheduled Tribes and other similar groups, was very important. Specific cases of violations of the human rights of the untouchables and other similar segments of the population by the security forces were covered in detail in the report by the Ambedkar Centre for Justice and Peace dated 17 July 1996. It would be of great interest to the Committee if India's next report were to contain details of any judgements and decisions by the Supreme Court granting redress in such cases. Much effort was needed to educate law enforcement personnel about the Government's obligations under various human rights instruments, since most of them appeared to be totally oblivious or indifferent to those obligations.

33. In the course of the Committee's previous meeting, the case of Jammu and Kashmir had been touched upon and it had been stated that paragraph 6 of the General Recommendation XXI (48) adopted by the Committee at its 1147th meeting in March 1996 had no relevance whatsoever in that connection, and that to invoke paragraph 6 in support of the position of one of the parties was inadmissible and contrary to the principles of international law governing friendly relations among States. He endorsed that view. A declaration by the Committee could neither override nor cancel any Security Council resolutions or reinterpret the principle of friendly relations, and for the Committee to adopt such a position was unwarranted and illegal. Furthermore, the Recommendation had not been adopted unanimously in the Committee and could at best serve as internal guidelines. It was defective in its legal interpretation of General Assembly Declaration 2625 (XXV) - the second principle of which laid specific obligations on States parties in respect of the settlement of disputes - and had ignored important principles set forth in General Assembly resolution 2649 (XXV), of which preambular paragraphs 3, 5 and 6 and operative paragraphs 1, 2 and 4 were particularly relevant. The Committee should therefore reconsider General Recommendation XXI (48).

34. Mr. SINGH (India) said that he was gratified by the interest shown by members and the enlightened debate India's fourteenth report had generated. He would attempt to respond to observations made by members.

35. Responding to remarks that the fourteenth report was too succinct, he explained that the report had been kept brief as a conscious decision, bearing

in mind the frequently raised calls at the United Nations for reducing the length of documents, and the wealth of information already available about India, including that provided during consideration of the previous report, and to provide an opportunity to engage in an extensive dialogue with the Committee. The report, therefore, focused mainly on aspects related to race as distinct from other categorizations referred to in the Indian Constitution. Since Committee members continued to be interested in other issues as well, the next report would be more elaborate and would take into account their suggestions. He had noted the emphasis on the need for regular reporting.

36. Comprehensive information on India's demographic composition, based on the latest census, was being provided to the Secretariat for distribution to the Committee.

37. The Country Rapporteur had referred to four separate concepts - race, caste, religion and community. The concept of "race" in India as recognized under the Constitution was distinct from caste; separate references to the two made it clear that caste was not equated with race. Engaged as it was in the task of eliminating all vestiges of caste discrimination, India could not accept another distinction. To confer a racial character on the caste system would create considerable political problems which could not be the Committee's intention. In a spirit of dialogue, however, India was prepared to provide more information on matters other than race, without prejudice to its understanding of the term "race" in the Convention.

38. To illustrate the clear distinction between caste and race, he pointed out that the Indian representatives before the Committee belonged to separate castes, but their racial identification was the same. That would be the case even if each of them professed a different religion. As for the remark made equating Hindus with the Hindi language, he pointed out that one of his colleagues was from Kerala and therefore Malayali-speaking; and he was also a Hindu.

39. Turning to the caste system, which had engaged the attention of the Committee, he explained that the concept of caste in India and caste classification under the Constitution related exclusively to Hindus and Sikhs. It was an age-old system, which denoted a social or class distinction, and was originally occupation-oriented. With the passage of time, the system had become rigid and exploitative and had led to discrimination against those of low status in the traditional caste hierarchy. Descent was not always traceable through caste as, for instance, in the case of a change of caste through inter-caste marriage. The Indian authorities had sought to redress the injustices affecting the lower castes through constitutional provisions and laws and also through affirmative action. Social evils related to caste had not yet been entirely eradicated. The conflicts which still occurred reflected the move towards effective enjoyment of equality as the under-privileged became more aware of their legal and constitutional rights and sought to assert them. Neither the Government nor its authorities condoned or tolerated infringements of the law. The example cited of problems in schools was inaccurate; the problem was not one of segregation but of sufficient resources to set up enough schools. Caste-related social prejudices, it was felt, could best be tackled through education and

awareness-raising. Evidence of changing power equations in society was the fact that some of the most populous States had or had had Chief Ministers belonging to Scheduled Castes or backward classes.

40. He had been surprised at the reference to a clash between Hinduism and Islam, but had been gratified to note that the Country Rapporteur did not consider that inevitable. He would add that not only was that not inevitable, but also that such communal problems as might arise were negligible in comparison with the size of the population and that safeguards were provided in the secularism of the State and guarantees of full equality for all religions. Some conflicts were bound to arise as the old order changed and minority voices were heard in a democracy which enshrined equality in the Constitution and the laws. The poverty and illiteracy figures quoted for Indian Muslims tallied with the national figures. All segments of the population were afflicted by poverty and illiteracy irrespective of religion, and the Government was firmly committed to poverty eradication, education, health care and employment for the entire population.

41. With regard to the concept of community, the organization of the States of the Indian Union on a linguistic basis was a conscious decision, in line with the concept of community as a grouping in which people shared the same language and cultural traditions irrespective of their religion. It was not the complexity of Indian society that caused the delays in submitting regular reports but, since the Indian people did not define themselves in terms of race, a lack of understanding among the local authorities about what kind of information to provide.

42. Turning to other observations, he again stressed that while in anthropological terms the racial origins of Indians were multiple, racial consciousness was irrelevant in the context of the social behaviour of modern-day Indians, who sought identification on different bases, which was why no cases of discrimination on grounds of race had come up before the courts.

43. Concerning access to the courts, the unique procedure adopted by the Supreme Court for public-interest litigation enabled anyone, not only the victim, to seek redress of violations, even by means of a postcard addressed to the court. A number of issues were also resolved through informal procedures such as the panchayats or village councils. Non-governmental organizations, the press and the National Human Rights Commission acted as watchdogs and brought up cases. The lok adalats were basically designed to facilitate access to quick legal remedies; they were mainly used for consumer-related problems and had not heard any cases of racial discrimination. Access to legal remedies was also being promoted through awareness-raising and education.

44. More ample information had been provided to the Human Rights Committee because its mandate covered a vast range of human rights issues, but his authorities would willingly make the report to the Human Rights Committee, and any additional information in areas of interest to members, available to Committee members.

45. Detailed information was being provided to the Committee through the Secretariat on the functions and statutory powers of the National Human Rights Commission, which consisted of five members appointed by the President. Chairpersons of the National Commissions for the Scheduled Castes and Scheduled Tribes, Women and Minorities, or their nominees, were ex officio members. Its main functions were to inquire into complaints of violations of human rights or abetment thereof, or negligence in the prevention of any such violation by a public servant; to inquire into any complaint of violation or deprivation of rights of any individual or group of individuals relating to life, liberty and dignity resulting from terrorist acts and to make appropriate recommendations thereon; to intervene in any proceeding involving any allegation of violation of human rights pending before a court, with the approval of the court; to review the safeguards provided for under the Constitution or any law for the protection of human rights and recommend measures for their effective implementation; to study treaties and other international human rights instruments and make recommendations for their effective implementation; to undertake and promote research in the field of human rights; to spread human rights literacy and promote awareness of the safeguards available for the protection of those rights; to encourage the efforts of non-governmental organizations and institutions working in the field of human rights; and to carry out such other functions as it might consider necessary for the protection of human rights. Some concern had been expressed in the Committee about reports of crimes committed against persons held in custody. The National Human Rights Commission had directed all heads of district administrations and police authorities to report all cases of crimes in custody within 24 hours of their occurrence or of being informed of such incidents. Failure to report would give rise to the presumption that there had been an attempt to cover up the incident. Several hundred cases had been registered and investigations launched by the Commission; reports had been called for from the Government. The Commission's observations had been accepted by the Government and followed up; prosecutions had ensued. The Commission had been active in promoting human rights education in schools, with the revision of textbooks and curricula, and in colleges and universities, where special degree courses on human rights had been introduced, and also in promoting human rights awareness and training for law enforcement officers.

46. Information concerning administrative action being taken in conformity with article 9 of the Convention was being provided along with the relevant demographic data. Regarding the implementation of the provisions of the Indian Penal Code concerning incitement to racial hatred, all available information would be collected and included in the next report.

47. On the subject of Anglo-Indians, their origins were such that their descendants could be traced only from the male progenitors, since they were descended from male colonizers who had had offspring from Indian women. Some of the special privileges granted to them by the British during colonial rule had been protected for 10 years after the Constitution had come into effect, to cushion the impact of the change. The only remaining privilege pertained to the representation of Anglo-Indians in the National Parliament and some State Assemblies. The number of Anglo-Indians was now around 100,000.

48. In reply to a question about the penalization of racial discrimination, he said that no case had been brought before the courts on those grounds, but that any further developments would be reported. Regarding paragraph 25 of the report, additional details would also be given in the next periodic report.

49. Replying to a question about caste discrimination by private individuals, he said that the Government's approach to such incidents included affirmative action, vigilant monitoring by statutory bodies and awareness-raising through education, and was supplemented by the role of non-governmental organizations, the press and civil society in general. There were numerous channels and procedures for bringing complaints and seeking redress, including through the National Human Rights Commission, the Government being determined to ensure that the perpetrators of such acts were brought to justice in accordance with the law.

50. Members had asked about the anti-terrorism laws in force in India, including the Terrorist and Disruptive Activities Act (TADA) and the Armed Forces Special Powers Act. As in the case of many other democracies confronted with the phenomenon of terrorism, the normal criminal laws of the land were found to be inadequate in dealing with those exceptional circumstances. Like them, India had laws which provided for preventive detention duly enacted by Parliament; safeguards to protect the fundamental rights of the individual under the due process of law had been built into them. The Government had invariably granted permission for prosecution of members of the security forces whenever prima facie evidence existed regarding the infringement of the rights of individuals. The Armed Forces Special Powers Act was applicable in areas which might be declared disturbed because of extraordinary conditions of insurgency or terrorism; it was still applicable in the north-east of the country. TADA had lapsed altogether.

51. Reference had been made to the Indian State of Jammu and Kashmir and to elections there. He had been happy to hear from the Country Rapporteur that the Committee had adopted a categorical statement that it would do nothing to encourage separatism, and was gratified at the Rapporteur's remark that references to Jammu and Kashmir did not in any way question the territorial integrity of India.

52. The Government's security forces had been deployed in Jammu and Kashmir to counter terrorism aimed at the destruction of the civil society and committed against the civilian population. Violence and terror had no place in a democracy where ample avenues existed to voice dissent. Despite the extremely difficult circumstances in which they had to operate, the security forces exercised the maximum restraint. Allegations of human rights violations were immediately investigated, and where justified, the alleged offenders prosecuted. If the Committee was interested, he could provide more details of terrorist acts which had been committed against innocent citizens.

53. Elections had recently been held in the six parliamentary constituencies of Jammu and Kashmir, as part of the general elections throughout India. Like in the rest of the country, those elections had been manifestly free and fair. They had been organized by the Election Commission, an independent constitutional entity, in full public gaze, with representatives of the

national and international media as well as foreign diplomats enjoying free access. Despite efforts to disrupt those elections through threats of violence and intimidation by terrorist elements, all segments of the population of Jammu and Kashmir had participated with enthusiasm, and the turnout in the six parliamentary constituencies had ranged from 41 to 83 per cent. That reflected the desire of the people of that Indian State for an end to violence, their rejection of the gun culture and their faith in India's democratic institutions. Any intimidation that might have occurred was only on the part of those terrorist and militant elements who had sought to deny citizens their democratic rights of exercising their franchise. Full details of the election results were being provided to the Committee. The Government was determined to hold elections to the Jammu and Kashmir State Assembly in September 1996 and return the State to democratic government.

54. His Government had submitted detailed information about the overall human rights situation in India to the various human rights mechanisms in accordance with their mandates; if members were interested in a specific issue, he would provide copies of India's communications, which were also available with the Centre for Human Rights. At the same time, he underlined the fact that the problems related to general issues raised by members were political in nature and had no racial, religious, caste or community basis.

55. He wished to inform members regarding problems with terrorism faced by India. Recent incidents of terrorism had captured the attention of the entire world community. The taking of foreign hostages in Jammu and Kashmir in July 1995 had brought to light the problems faced by India, whose people had endured enormous suffering from terrorist attacks for the past several years. The question was, when its citizens were ruthlessly killed or bombed, how should a nation react? Countering terrorism was specially difficult for a democracy which must at all times uphold the rule of law. Although the issue did not come within the Committee's mandate, he would welcome any advice that members had to offer on how best to counter that phenomenon. Pluralistic, democratic and secular societies such as that of India were particularly vulnerable to the forces of political extremism which manifested themselves through violence and terrorism. The terrorist problem in the north-eastern States of India, which had been identified with tribal and ethnic aspirations, had greatly decreased since a successful political dialogue had been established. The remaining problems, including arms and narcotics smuggling, were being resolved through a dialogue with India's neighbours. The problem of terrorism in Punjab had also been brought under control since the return of democratic government to that State. In Jammu and Kashmir the Government's primary obligation was to protect innocent civilians, maintain the rule of law and provide for elections to restore democratic governance. He wished to state categorically that, while respecting and upholding the commitment of India's democracy to the rule of law, his Government would not flinch from carrying out those responsibilities. It would also defend India's territorial integrity against all threats.

56. In concluding, he stated that it was not enough to adopt good laws for the protection of human rights; it was essential to implement them fully, which could sometimes be a problem in a developing society hampered by poverty and illiteracy. Furthermore, problems related to the symptoms of poverty and social evils could only be confronted with the active involvement of civil

society down to the grass-roots level. There was consensus at the highest levels of his Government that all forms of prejudice had to be dealt with and would not be tolerated or sanctioned by the State. India had faced the monumental task of transforming an ancient society into a modern one in 50 years. Stress was being placed on education in the belief that a literate people would not allow themselves to be exploited on any grounds. The literacy rate had risen from 18 per cent at independence to 52 per cent, but much more remained to be done. The problem of poverty was also being tackled comprehensively, as it afflicted all segments of society irrespective of religion, caste or creed. The major focus of economic reforms was hence on social infrastructure development.

57. The CHAIRMAN invited the members of the Indian delegation to continue their replies at the next meeting.

58. The Indian delegation withdrew.

Tenth, eleventh and twelfth periodic reports of Malta (CERD/C/262/Add.4) (continued)

59. At the invitation of the Chairman, Mr. Quintano (Malta) resumed his place at the Committee table.

60. Mr. QUINTANO (Malta), replying to the questions raised by members, said that section 6 of the Constitution stated that the Constitution was supreme and took precedence over any other law. Chapter 4 of the Constitution laid down the fundamental rights and freedoms of citizens and could be amended only by a two-thirds majority of the Maltese parliament. Chapter 319 of the Constitution entitled people who considered themselves victims of discrimination on any grounds to bring their case easily and cheaply before the courts. Chapter 3 of the Constitution laid down the rules about citizenship. He would provide the Centre for Human Rights with a copy of all the above provisions for consultation by members.

61. The Convention could not be directly invoked before Maltese courts. However, the Government considered that the guarantees laid down in the Convention were amply covered by the existing laws of Malta. The remedies laid down in article 6 of the Convention were provided by the Civil Court First Hall (under section 46 and also section 4 of chapter 319 of the Constitution), and the Constitutional Court (under section 93 and also section 4 of chapter 319 of the Constitution). To give some idea of the level of compensation awarded, a tourist guide had been awarded compensation equivalent to Sw F 115,150 in a case of political discrimination.

62. As for article 5 of the Convention, the right to equality before the courts was enshrined in section 45 and in section 4 and schedule 1, article 14, of chapter 319 of the Constitution. The right to security of person was enshrined in section 139 A of the Criminal Code, which dealt with torture - as far as he was aware, Malta was the only country with specific legislation prohibiting torture - and also sections 221-226 A of the Criminal Code.

63. Section 57 of the Constitution stated that citizens of Malta who were 18 years of age or over and resident in the country were entitled to participate in elections and in the conduct of public affairs. Foreign nationals were allowed to vote in local council elections on a reciprocal basis. Entry into the public service was regulated by the independent Public Service Commission and by articles 10, 11 and 14 of schedule 1 of chapter 319 of the Constitution.

64. Maltese citizens, including those who had emigrated, had the right to reside in the country and to own property there. Non-citizens were naturally more restricted, but everyone had the right to leave Malta, whatever their citizenship. The right to nationality was regulated by chapter 3 of the Constitution and by the Citizenship Act, which did not discriminate on racial grounds. The right to marriage was regulated by articles 12 and 14 of schedule 1 of chapter 319 of the Constitution. The right to own property was enshrined in section 37 of the Constitution. The right to inherit property was enshrined in section 45 of the Constitution, which, in his opinion, contained an interpretation of the definition of discrimination superior to that in the Convention. Freedom of thought and opinion were guaranteed by articles 9 and 10 of schedule 1 of chapter 319 of the Constitution.

65. Turning to article 4 of the Convention, he said that the dissemination of ideas based on racial superiority was prohibited by chapter 71 of the Seditious Propaganda (Prohibition) Ordinance. People who abetted the dissemination of such ideas could be prosecuted under sections 42 and 43 of the Criminal Code. Organizations which promoted racial discrimination were prohibited under section 83 of the Criminal Code. Under section 45 of the Constitution public authorities were forbidden to promote or initiate racial discrimination.

66. Article 2, 1 (a) and (b) of the Convention forbade a State party to practise or support racial discrimination. Both of those practices were prohibited under section 45 of the Maltese Constitution. There were no laws which perpetuated racial discrimination in the way described in article 2, 1 (c) of the Convention. With reference to article 2, 1 (d) of the Convention, Mr. Wolfrum had asked whether private persons could be taken to court in cases where normally only the State would be liable. He had himself taken part in a case where the court had decided, on appeal, that a "parastatal body" (a non-public body in which the Government nevertheless owned a majority shareholding) was subject to prosecution on the same basis as the State itself. Another case was pending, in which a footballer had brought a case of discrimination against his football club; no one had questioned his right to bring the action. Malta saw no case for positive discrimination, as referred to in article 2, 2 of the Convention.

67. In respect of article 1 of the Convention, his only comment was that, as a lawyer, he considered that the definition of racial discrimination was not an adequate one.

68. A number of constitutional reforms were under way, which were intended to strengthen the presidency. The negotiations were deadlocked at present, but it had been decided that, if two parties were represented in Parliament, the party which had achieved the higher number of votes would have the majority of seats.

69. The Government had thought it necessary to conduct media campaigns to discourage racial discrimination despite the relatively homogeneous ethnic composition of the Maltese population, because of the increasing number of tourists, students and refugees from other countries. Malta had taken in a large number of refugees, given its small population, and they had one advocate in particular, a priest, who campaigned most actively for their rights.

70. He had noted members' comments calling upon Malta to recognize the Committee's competence to consider communications from individuals, as provided for in article 14, paragraph 1, of the Convention. He would use his influence with the Government to try to ensure that Malta made that declaration in the near future.

71. Mr. VALENCIA RODRIGUEZ (Country Rapporteur) thanked the Maltese representative for his answers to the Committee's questions and for the information which he had provided in writing.

72. The CHAIRMAN thanked the Maltese representative for his positive contribution to the Committee's work and said that the Committee had thus completed the first part of its consideration of Malta's tenth, eleventh and twelfth periodic reports.

The meeting rose at 1 p.m.